Mah Chin Booi (plot owner — 1/1 parcel (beneficial)) v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur

HIGH COURT (KUALA LUMPUR) — LAND REFERENCE NO WA-15–1–01 OF 2023
LEONG WAI HONG J
30 JULY 2025

Land Law — Acquisition of land — Compensation — Applicant objected against quantum of compensation awarded by land administrator — Land administrator awarded compensation based on flat value only and not value of scheduled land, despite acquisition of entire scheduled land which included common property — Whether applicant entitled to compensation based solely on his flat or ought to include his unit share of common property when entire land including common property was acquired — Whether applicant's method ought to be preferred in valuing applicant's unit share of common property — Strata Titles Act 1985 ss 17B, 57A & Seventh Schedule

On a piece of land ('the scheduled land') which was acquired pursuant to s 3(1)(c) of the Land Acquisition Act 1960 ('the LAA'), sat a block of low-costs walk-up flats comprising 80 units, open-air carpark bays and vacant land. The building area was about 15.5% of the scheduled land whereas the remaining 84.5% was the common property. No management committee was set up and the registered owner of the scheduled land had been dissolved. The land administrator awarded compensation based on the flat value only and not the value of the scheduled land, despite the acquisition of the entire scheduled land which included the common property. A sum of RM101,944.50 was awarded to the applicant based on his parcel value only. He claimed based on the cost method, he should be awarded RM390,000 based on his flat value and his unit share of the common property. Hence, this land reference proceeding. The applicant contended that the compensation award was too low because: (a) it did not reflect the market value; and (b) it did not take into account the value of the common property in the scheduled land despite the parcel owners being the beneficial owners of the common property. The land administrator asserted, inter alia, that: (i) the applicant's method of combining the value of the parcel and the common property was considered 'double counting'; and (ii) compensation should only be given to each parcel and not the whole of the scheduled land that was *gazetted* according to the LAA.

Held:

(1) If the flat owners were to sell their flats and common property in its entirety, each of the flat owner was entitled to be compensated for the

value of his flat and his unit share of the value of the common property. This would satisfy the 'principle of equivalence' which required the sum that was awarded should, as far as practicable, place the person in the same financial position as he would have been in had there been no question of his land being compulsorily acquired. To hold otherwise would mean the acquirer/developer ultimately developing the schedule land would obtain a windfall gain as the acquirer/developer would get for free the common property which constitutes 84.5% of the schedule land. The cumulative effects of s 17B, s 57A and the Seventh Schedule of the Strata Titles Act 1985 ('the STA') was that the management corporation was merely holding the common property as bare trustee for the flat owners. The following principles must apply when the entire land where a block of flats sits was acquired, including the common property: (a) the flat owners in the land reference were entitled to compensation based on their individual flat; (b) the management corporation was entitled to compensation for the common property as the management corporation owned the common property, albeit as trustee for the flat owners; (c) the management corporation shall pursuant to s 57A of the STA when the subdivided building or land was acquired under the LAA, distribute the compensation for the common property to the former proprietors in proportion to their share units; iv. If the management corporation is not set up, then compensation for the common property is given to the flat owners in proportion to their share units; and (d) if the management corporation was not set up, then compensation for the common property was given to the flat owners in proportion to their share units because the common property was held in trust by the developer for the benefit of all parcel purchasers. The applicant in the land reference was entitled to compensation based on his flat and his share units of the value of the common property when the entire land — where the block of flats sat — was acquired including the common property (see paras 69–71, 87–88 & 93).

(2) The cost approach advocated by the applicant was not suitable as the block of flats was old and low costs. It was highly unlikely the acquirer would refurbish it to resell. It was likely that it would be demolished to be redeveloped from a completely vacant land. The valuation method used by both the Government and private sector assessors, which was to value the vacant land by using a nearest comparable and then make the necessary deductions for location, for land category, for DO approval and for the costs of demolishing the block of flats, hall and clearing the debris was preferred. While the Government assessor said that the additional compensation should be RM241,398.12 and the private assessor said it should be RM228,872.40, a fair sum was the average of these two sums which gave an additional compensation to the applicant of RM235,135.26. Late payment charges at 5% per year on the additional

compensation award calculated from 27 September 2022 to the date of payment of the additional compensation was also awarded. Since the claim of the applicant exceeded by 20% or more of the court award, he shall not be entitled to his costs. The applicant also bore the assessors' fees as there were no rules or guidelines issued on who should bear the fees. Lastly, the land administrator was ordered to refund the deposit of RM3,000 to the applicant since the applicant's claim for higher compensation was allowed (see paras 133–135, 141, 144, 146 & 148).

[Bahasa Malaysia summary

Di atas sebidang tanah ('tanah yang dijadualkan') yang telah diambil alih di bawah s 3(1)(c) Akta Pengambilan Tanah 1960 ('APT'), terdapat satu blok flat kos rendah yang terdiri daripada 80 unit, ruang tempat letak kereta terbuka, dan tanah kosong. Kawasan bangunan adalah kira-kira 15.5% daripada tanah yang dijadualkan manakala baki 84.5% adalah harta bersama. Tiada jawatankuasa pengurusan ditubuhkan dan pemilik berdaftar tanah berjadual telah dibubarkan. Pentadbir tanah memberikan pampasan berdasarkan nilai flat sahaja dan bukan nilai tanah yang dijadualkan, walaupun pengambilan keseluruhan tanah yang dijadualkan merangkumi harta bersama. Sejumlah RM101,944.50 telah diberikan kepada pemohon berdasarkan nilai petaknya sahaja. Beliau mendakwa berdasarkan kaedah kos, beliau seharusnya diberikan RM390,000 berdasarkan nilai flatnya dan bahagian unitnya dalam harta bersama. Oleh itu, prosiding rujukan tanah ini dimulakan. Pemohon berhujah bahawa pampasan yang diberikan terlalu rendah kerana: (a) ia tidak mencerminkan nilai pasaran; dan (b) ia tidak mengambil kira nilai harta bersama dalam tanah yang dijadualkan walaupun pemilik petak adalah pemilik benefisial harta bersama. Pentadbir tanah mendakwa, antara lain, bahawa: (i) kaedah pemohon menggabungkan nilai petak dan harta bersama dianggap 'pengiraan berganda'; dan (ii) pampasan seharusnya hanya diberikan kepada setiap petak dan bukan keseluruhan tanah yang dijadualkan yang telah diwartakan mengikut APT.

Diputuskan:

(1) Sekiranya pemilik flat menjual flat dan harta bersama mereka secara keseluruhan, setiap pemilik flat berhak untuk diberi pampasan bagi nilai flatnya dan bahagian unitnya dalam nilai harta bersama. Ini akan memenuhi 'prinsip kesamaan' yang menghendaki jumlah yang dianugerahkan, sejauh yang boleh dilaksanakan, meletakkan individu tersebut dalam kedudukan kewangan yang sama seperti jika tanahnya tidak diambil alih secara wajib. Jika tidak, pengambil alih/pemaju yang akhirnya membangunkan tanah yang dijadualkan itu akan memperoleh keuntungan luar jangka kerana pengambil alih/pemaju akan mendapat harta bersama secara percuma, yang merupakan 84.5% daripada tanah yang dijadualkan. Kesan kumulatif s 17B, s 57A dan Jadual Ketujuh Akta

Hakmilik Strata 1985 ('AHS') adalah bahawa perbadanan pengurusan hanyalah memegang harta bersama sebagai pemegang amanah kosong untuk pemilik flat. Prinsip-prinsip berikut mesti terpakai apabila keseluruhan tanah di mana blok flat itu terletak diambil alih, termasuk harta bersama: (a) pemilik flat dalam rujukan tanah itu berhak menerima pampasan berdasarkan flat individu mereka; (b) perbadanan pengurusan berhak menerima pampasan bagi harta bersama kerana perbadanan pengurusan memiliki harta bersama, walaupun sebagai pemegang amanah untuk pemilik flat; (c) perbadanan pengurusan hendaklah menurut s 57A AHS apabila bangunan atau tanah yang dipecah bahagi diambil alih di bawah APT, mengagihkan pampasan bagi harta bersama kepada bekas pemilik mengikut kadar unit bahagian mereka; dan (d) jika perbadanan pengurusan tidak ditubuhkan, maka pampasan bagi harta bersama diberikan kepada pemilik flat mengikut kadar unit bahagian mereka kerana harta bersama dipegang secara amanah oleh pemaju untuk manfaat semua pembeli petak. Pemohon dalam rujukan tanah berhak menerima pampasan berdasarkan flatnya dan bahagian unitnya dalam nilai harta bersama apabila keseluruhan tanah — di mana blok flat itu terletak — diambil alih termasuk harta bersama (lihat perenggan 69–71, 87–88 & 93).

(2) Kaedah kos yang dicadangkan oleh pemohon tidak sesuai kerana blok flat itu lama dan berkos rendah. Sangat tidak mungkin pengambil alih akan mengubah suai untuk menjual semula. Kemungkinan besar ia akan dirobohkan untuk dibangunkan semula dari tanah yang kosong sepenuhnya. Kaedah penilaian yang digunakan oleh kedua-dua penilai Kerajaan dan sektor swasta, iaitu untuk menilai tanah kosong dengan menggunakan perbandingan terdekat dan kemudian membuat potongan yang diperlukan untuk lokasi, kategori tanah, kelulusan DO dan kos merobohkan blok flat, dewan dan membersihkan serpihan adalah diutamakan. Walaupun penilai Kerajaan menyatakan bahawa pampasan tambahan sepatutnya RM241,398.12 dan penilai swasta menyatakan ia sepatutnya RM228,872.40, jumlah yang adil adalah purata kedua-dua jumlah ini yang memberikan pampasan tambahan kepada pemohon sebanyak RM235,135.26. Caj lewat bayar pada kadar 5% setahun atas anugerah pampasan tambahan yang dikira dari 27 September 2022 sehingga tarikh pembayaran pampasan tambahan tersebut turut dianugerahkan. Memandangkan tuntutan pemohon melebihi 20% atau lebih daripada anugerah mahkamah, dia tidak berhak mendapat kosnya. Pemohon juga menanggung fi penilai kerana tiada peraturan atau garis panduan dikeluarkan mengenai siapa yang patut menanggung fi tersebut. Akhir sekali, pentadbir tanah diperintahkan untuk mengembalikan deposit RM3,000 kepada pemohon memandangkan tuntutan pemohon untuk pampasan yang lebih tinggi telah dibenarkan (lihat perenggan 133–135, 141, 144, 146 & 148).]

Cases referred to

Amitabha Guha (as beneficiary for the estate of Madhabendra Mohan Guha) v Pentadbir Tanah Daerah Hulu Langat [2021] 4 MLJ 1, FC (refd)

Bertam Consolidated Rubber Co Ltd v Deputy Collector of Land Revenue, Butterworth [1965] 1 MLJ 171 (refd)

Choo Oh Kim and others v Mok Yuen Lok and others [2005] MLJU 186, HC (refd)

Draman bin Kassim v Land Administrator, District of Hulu Terengganu [1990] 3 MLJ 465; [1990] 2 CLJ 926, SC (refd)

Jais bin Chee & Ors v Superintendent of Lands and Surveys Kuching Division, Kuching [2014] 6 MLJ 439, CA (refd)

Koriah bt Sudar v Pentadbir Tanah Kuala Langat [2013] 3 MLJ 695; [2013] 5 CLJ 571, CA (refd)

Mah Chin Booi (Pemilik Petak – 1/1 Bahagian (Benefisial) v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur [2025] MLJU 487, HC (refd)

Nusantara Jaya Daya Sdn Bhd v Pentadbir Tanah Johor Bahru [2020] MLJU 110, CA (refd)

Perbadanan Pengurusan Ara Ampang v Pentadbir Tanah Daerah Hulu Langat [2021] 10 MLJ 752, HC (refd)

Persatuan Pemandu-Pemandu Perempuan Malaysia lwn Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur [2022] 5 MLJ 21, CA (refd)

Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case [2017] 3 MLJ 561, FC (folld)

Shell (M) Trading Sdn Bhd v Pentadbir Tanah Wilayah Persekutuan [2014] 8 MLJ 94, HC (refd)

Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v Inch Kenneth Kajang Rubber Ltd & Anor [2011] 4 MLJ 403, CA (refd)

Tegas Sejati Sdn Bhd v Pentadbir Tanah dan Daerah Hulu Langat & Anor and another appeal [2024] 3 MLJ 329, FC (refd)

Teguh Kemajuan Sdn Bhd v Pentadbir Tanah, Daerah Kota Tinggi (Perbadanan Setiausaha Kerajaan Johor (SSI), pihak pencelah) [2018] MLJU 442, HC (refd)

Yong Ing Kai & Anor v Superintendent of Lands and Surveys Kuching Division [2023] 6 MLJ 904; [2023] 10 CLJ 206, FC (refd)

Legislation referred to

Federal Constitution art 13

Land Acquisition Act 1960 ss 2, 3(1)(c), 8, 14, 22, 36(4), 37, 39, 40A, 40B, 40C, 40D, 48, 51, Form K

National Land Code s 44

Strata Management Act 2013 ss 8, 17

Strata Titles Act 1985 ss 17B, 57A, Seventh Schedule

Kabilan a/l K Mathavan (with Lim Woi Kein) (WK Lim & Partners) for the applicant.

Iskandar Zulkarnaen (Attorney General's Chamber) for the respondent.
Zaifunur'ain bt Zainal Abidin for the assessor from the private sector.
Mohd Zamri bin Awang for the assessor employed by the Government.

Leong Wai Hong J:

ISSUES

[1] The main issue before me is whether the applicant in the land reference before me is entitled to compensation based solely on his flat or whether his compensation includes his share of the value of the common property when *the entire land* — where the block of flats sits — *is acquired including the common property.*

[2] This issue has a significant financial impact on the flat owners' compensation and the acquiring body as:

(a) the Government assessor has valued the common property comprising *the hall and the carpark lots* at RM6,343,957.50 (see report dated 17 February 2025 at p 9); and

(b) the Government assessor has also valued the common property comprising *the unused land* at RM12,967,850 (see report dated 17 February 2025 at p 10).

[3] As I see it, the real sting of the applicant's contention is that if the flat owners are only compensated for the value of their respective flats it would mean the acquirer/developer ultimately developing the Scheduled Land will obtain a windfall gain, a *durian runtuh* to use an apt Malay peribahasa, as the acquirer/developer would get for free the common property which constitutes 84.5% of the Scheduled Land.

[4] If the answer to the issue is affirmative, the secondary issue is how does one value the applicant's share of the common property.

[5] Counsel have informed me there are no reported cases on the above issues.

WRITTEN SUBMISSIONS FILED

[6] For the hearing before me, parties filed the following written submissions:

(a) applicant's written submission dated 20 March 2024 (encl 40/42);

(b) respondent's written submission dated 19 March 2024 (encl 38);

(c) applicant's supplementary written submission dated 17 May 2024 (encl 47);

(d) respondent's written submission in reply dated 2 May 2024 (encl 44);

(e) applicant's written submission dated 24 March 2025 (encl 63);

(f) respondent's written submission dated 7 April 2025 (encl 64);

(g) applicant's written submission in reply dated 9 April 2025 (encl 65);

(h) applicant's written submission dated 22 July 2025 (encl 76); and

(i) respondent's written submission dated 28 July 2025 (encl 77).

VALUERS' REPORTS FILED

[7] Parties also filed the following valuers' reports:

(a) applicant's valuers (encl 25);

(b) respondent's valuers report (encl 8);

(c) applicant's valuers reply report (encl 32);

(d) respondent's valuers reply report (encl 33);

(e) applicant's valuers additional report (encl 50); and

(f) respondent's valuers additional report (encl 53);

MATERIAL FACTS

Scheduled Land

[8] A piece of land was acquired pursuant to s 3(1)(c) of the Land Acquisition Act 1960 ('the LAA 1960'). This piece of land which is acquired under the LAA 1960 is called 'Scheduled Land' pursuant to s 8 read with s 2 of the LAA 1960.

[9] On the Scheduled Land sits a block of low-costs walk-up flats comprising 80 units, open-air carpark bays and vacant land. This block of flats is called The Taman Rajawali Flats. A picture of the flats and vacant land can be seen in encl 8 Government valuation report dated 25 July 2022 at p 8.

[10] Hwa-Li Development Sdn Bhd is the registered owner of the Scheduled Land. However, the sale and purchase agreements with Hwa-Li Development Sdn Bhd explicitly designate all areas of the Scheduled Land, excluding individual parcels owned by the parcel owners, as common property of the Scheduled Land.

(See definition of common property in article 1 of the sale and purchase agreement, a copy of which is exhibited in the valuation report of the applicant's valuer Weise International Property Consultants Sdn Bhd dated 23 August 2024 encl 50 *Lampiran* A.)

No management committee set up and the registered owner of the Scheduled Land dissolved

[11] No management committee was set up and the registered owner of the Scheduled Land Hwa-Li Development Sdn Bhd has been dissolved. In any event, by law Hwa-Li Development Sdn Bhd is a bare trustee of the Scheduled Land following the receipt of the full purchase price from the flat owners. The sale included both individual parcels and common property.

Building area is 15.5% of the Scheduled Land whereas the remaining 84.5% is the common property

[12] The land acquisition was for the redevelopment of the Taman Rajawali Flats, a development project established under the Urban Renewal program, an initiative by the Federal Territories Ministry (KWP) based on the Kuala Lumpur Renewal Guidelines launched on 29 January 2021.

[13] It must be noted that the Scheduled Land that is acquired includes the Taman Rajawali Flats, a hall, the open-air carpark bays and vacant land.

[14] The total size of the Scheduled Land is 100,643sqft (9350sqmt or 2.31 acres). The base plinth area of the Rajawali Flat located in the Scheduled Land is 15,600sqft (1,449.25sqmt). The remaining vacant land, which is common property is 85,043 sqft (7,900.75 sqmt).

[15] In terms of percentage, the building area is about 15.5% of the Scheduled Land whereas the remaining 84.5% is the common property. A colour picture of the Scheduled Land can be seen in encl 42 applicant's written submission at para 2.

*Award by land administrato*r

[16] The land administrator awarded compensation based on the flat value only and not the value of the Scheduled Land, despite the acquisition of the entire Scheduled Land which includes the common property. As mentioned earlier, the common property comprises 84.5% of the Scheduled Land.

[17] A sum of RM101,944.50 was awarded to the applicant in this land reference based on his parcel value only. He claims based on the cost method he

should be awarded RM390,000 based on his flat value and his unit share of the common property (see encl 40 applicant's written submission at para 15 at p 7).

[18] A sum of RM14,000 was also awarded being incidental costs. This sum is not in dispute in this land reference.

PROCEDURAL HISTORY

[19] There are ten land references fixed for hearing before me. In all these references the applicants are represented by the same firm and counsel whereas the respondents are all represented by Jabatan Peguam Negara Malaysia.

[20] The applicants all contend that the monetary compensation awarded by the land administrator are too low (see encl 42 applicant's written submission at para 10 at p 5).

[21] All parties have agreed that my decision in this land reference will bind the other nine land references.

[22] I heard counsel on 21 March 2024 and 21 May 2024. Thereafter I was transferred to another court. At the request of parties to the Chief Judge of Malaya, these ten land references were remitted back to me on 10 January 2025 for final disposal. Thus, the ten cases were fixed for continued hearing on 15 January 2025 before me and the two assessors appointed to assist me pursuant to s 40A of the LAA 1960.

[23] After the hearing on 15 January 2025 there was disagreement between counsel whether the assessors' opinions to me as the judge must be given to counsel to review and rebut during the High Court proceedings before delivery of decision or to be given only as part of the appeal records to the Court of Appeal if there is an appeal lodged.

[24] A round of submissions was held and I decided that the assessors' opinions to me as the judge must be given to counsel to review and rebut during the High Court proceedings before delivery of decision. My grounds of decision are reported as *Mah Chin Booi (Pemilik Petak — 1/1 Bahagian (Benefisial) v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2025] MLJU 487 (HC).

[25] Counsel then submitted before me on 10 April 2025 and on 30 July 2025. This then are my grounds of decision for the challenge to the quantum of compensation in the award by the land administrator.

ISSUES

[26] As stated above there are two issues. They are:

(a) issue 1 — Whether the applicant in the land reference before me is entitled to compensation based solely on his flat or whether his compensation includes his unit share of the common property when the entire land — where the block of flats sits — is acquired including the common property; and

(b) issue 2 — If the answer to issue 1 is affirmative, the secondary issue is how does one value the applicant's unit share of the common property

LAW AND PRACTICE ON LAND OWNERSHIP, LAND ACQUISITION AND THE CHANGES IN THE LAND ACQUISITION LAW AND PROCEDURE

[27] Before I consider the issues, I wish to set down the law and practice on land ownership, land acquisition and the changes in the land acquisition law and procedure over the years.

Whoever's is the soil, it is theirs all the way to heaven and all the way to hell

[28] The doctrine of *cuius est solum, eius est usque ad coelum et ad inferos* (Latin for 'whoever's is the soil, it is theirs all the way to heaven and all the way to hell') states that land owners have the rights not only to the plot of land itself, but also the air above and the ground below. This principle is often referred to as the *ad coelum* doctrine.

[29] This right of ownership over land has been restricted by s 44 of the National Land Code (Revised 2020) Act 828, which provides that the landowner shall be entitled to 'the exclusive use and enjoyment of so much of the column of airspace above the surface of the land, and so much of the land below the surface, as is reasonably necessary to the lawful use and enjoyment of the land'.

[30] The Federal Constitution guarantees a person to a right to property. However, it is not an absolute right. Article 13 of the Federal Constitution reads:

(1) No person shall be deprived of property save in accordance with law.

(2) No law shall provide for the compulsory acquisition or use of property without adequate compensation.

A LEGAL FRAMEWORK OF LAND ACQUISITION

[31] Proceedings pertaining to land acquisition are governed by the LAA 1960 which is a special Act governing the land acquisition process and procedure in Malaysia which must be strictly adhered to (see *Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v Inch Kenneth Kajang Rubber Ltd & Anor* [2011] 4 MLJ 403 (CA)) ('Sistem Lingkaran').

[32] The Court of Appeal in *Sistem Lingkaran* at pp 406–407 held as follows:

> [4] The LAA 1960 is a special Act relating to the acquisition of land, the procedure for the assessment of compensation to be made on account of such acquisition and all matters incidental thereto, including the manner, procedure, and circumstances upon which any dissatisfied party to an award of compensation may pursue legal redress in the court. *In view of it being a special Act we are unanimous that the statutory provisions therein must be strictly adhered to* and made applicable to all relevant parties. *All procedural steps leading for a final determination of any award shall be in accordance with the provisions of LAA 1960*. This is clearly recognised in respect of all proceedings in the court, as can be seen from s 45(2) of the LAA 1960 which reads:
>
> > (2) Save in so far as they may be inconsistent with anything contained in this Act, the law for the time being in force relating to civil procedure shall apply to all proceedings before the Court under this Act. (Emphasis added.)

THE LAND REFERENCE COURT

[33] Section 36(4) read with the definition of 'Court' in s 2 of the LAA 1960 confers jurisdiction upon the High Court to determine any objection in respect of an award made by the land administrator under s 14 of the Act. The High Court here is referred to as the land reference court (see *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561 (FC) at [30] ('Semenyih Jaya')).

[34] Section 36(4) of the LAA 1960 reads as follows:

> 36(4) After an award has been made under section 14 the Land Administrator shall refer to the Court for determination any objection to such award duly made in accordance with this Part.

[35] Section 37 of the LAA 1960 provides that an aggrieved party has a legal right to object to the award of the land administrator by way of a land reference to the High Court provided that the total amount awarded in compensation in respect of the acquired land is not less than RM3,000.

[36] Specific statutory provisions governing the land reference court are

ss 40A (Constitution of the Court), 40B (Assessors), 40C (Opinion of Assessors) and 40D (Decision of the Court on Compensation) of the LAA 1960.

THE FEDERAL COURT DECISION IN SEMENYIH JAYA

[37] However, a major change came in 2017 when the Federal Court in the case of *Semenyih Jaya* declared s 40D of the LAA 1960 to be ultra vires the Federal Constitution and that it should be struck down. The Federal Court said:

> [115] For all the reasons above, we find s 40D of the Act to be ultra vires the Federal Constitution and that it should be struck down.

[38] The Federal Court further said at [224]:

> (a) by s 40A, the matters are to be heard before a single judge. The court shall appoint two assessors to assist the judge in determining the objection made by the appellants against the amount of compensation awarded by the land administrator;
>
> (b) at the end of the proceedings, the assessors are required to give their opinions in writing as to the appropriate amount of compensation to be awarded in this case pursuant to s 40C of the Act. The assessors must give due consideration to all the heads of compensation claimed by the appellant under the Act;
>
> (c) the opinion of the assessors are to be recorded by the judge. The judge has a duty to consider both of the opinions of the assessors. The judge is to exercise his mind in determining the amount of compensation to be awarded to the appellant, based on the principle of equivalence; and
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> (d) the provisions of sub-s 36(4) of the Act are to be given full effect. The judge shall not be bound to conform to the opinions of the assessors. In the event of any disagreement between the assessors with regard to the amount of compensation, the judge may elect to consider which of the two opinions in his view is appropriate in the circumstances of the case. The judge is also at liberty to depart from the opinion of either of the assessors and decide on the reasonable amount of compensation to be awarded to the appellant by giving reasons for so doing.

[39] Following *Semenyih Jaya*, a practice direction was issued by the Chief Judge of Malaya via Arahan Amalan Hakim Besar Malaya Bil 1 Tahun 2017, dated 6 June 2017 setting out the steps to be taken by the land reference court in order to comply with *Semenyih Jaya* (see *The Law on Land Acquisition* by Su Tiang Joo and Pang Kong Leng (CLJ Publication 2018 ed) at p 279).

A THE FEDERAL COURT DECISION IN TEGAS SEJATI

[40] In 2024 the Federal Court made a second major pronouncement in respect of the LAA 1960 in *Tegas Sejati Sdn Bhd v Pentadbir Tanah dan Daerah Hulu Langat & Anor and another appeal* [2024] 3 MLJ 329 (FC) ('Tegas Sejati').

[41] In *Tegas Sejati* the appellant entered into a joint-venture agreement with Perbadanan Setiausaha Kerajaan Selangor ('PSKS') to develop several lots of land. PSKS, as the registered proprietor received the entire consideration under that joint-venture agreement and relinquished its rights to the appellant in respect of those lands. Some of the land involved in the development was subdivided. These subdivided lots were initially acquired by the state government for the purpose of a highway project. Lembaga Lebuhraya Malaysia ('LLM') ie the second respondent, was the paymaster for this acquisition.

[42] At the enquiry held on 16 May 2017, the land administrator ('LA') ie the first respondent, handed down an award for compensation to which both LLM and the appellant objected. Both LLM and the appellant filed their respective objections and this led to two land reference proceedings before the High Court.

[43] The High Court dismissed the appellant's land reference but allowed LLM's land reference. The appellant appealed and LLM cross-appealed, seeking to vary part of the High Court's decision and a return or repayment of an excess sum of over RM31m together with interest. The Court of Appeal dismissed the appellant's appeal but allowed LLM's cross-appeal and directed a refund of a portion of the sum together with interest.

[44] The appellant appealed to the Federal Court. However, the Federal Court did not hear the merits of the appeal. Instead the Federal Court asked for submissions on whether there was compliance with s 40C of the LAA 1960.

[45] Section 40C of the LAA 1960 reads as follows:

> 40C Opinion of assessors
>
> The opinion of each assessor on the various heads of compensation claimed by all persons interested shall be given in writing and shall be recorded by the Judge.

[46] The Federal Court held at [34] that:

> Although these opinions were intended to assist the court in arriving at a decision on the amount of compensation, it was imperative that parties had the opportunity

to consider them and to respond, if necessary.

[47] As these opinions of the assessors were not given to parties the Federal Court held that there was non-compliance with s 40C of the LAA 1960, allowed the appeals and remitted the matter back to the High Court for a re-hearing.

[48] Although the Federal Court in *Tegas Sejati* did not expressly say that the earlier Court of Appeal's reasoning in *Persatuan Pemandu-Pemandu Perempuan Malaysia lwn Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2022] 5 MLJ 21 (CA) — *which held that the assessors' opinions are solely for the perusal, consideration and records of the High Court judge, and should any party wants sight of those opinions an application will then have to be made to court* — should no longer be followed, it is clear by implication that *Persatuan Pemandu-Pemandu Perempuan Malaysia* is no longer good law.

[49] The Federal Court in *Tegas Sejati* remitted the matter back to the High Court for a re-hearing. This must mean that the assessors' opinions must be given during the High Court proceedings and not at the Court of Appeal proceedings.

[50] I now consider issue 1.

Issue 1 — Whether the applicant in the land reference is entitled to compensation based solely on his flat or whether his compensation includes his unit share of the common property when the entire land — where the block of flats sits — is acquired including the common property

The applicant's contentions

[51] The applicant contends that the compensation awarded is too low because:

(a) the compensation amount for the parcel does not reflect the market value;

(b) the compensation did not take into account the value of the common property in the Scheduled Land despite the parcel owners being the beneficial owners of the common property; and

(c) the compensation did not take into account the value of the Scheduled Land in its entirety, as the parcel owners are the beneficial owners of the Scheduled Land.

(Refer to *Borang* N in applicant's valuers rebuttal report.)

[52] The applicant contends the land administrator awarded compensation based solely on the parcel value only and not the value of the Scheduled Land, despite the acquisition of the entire Scheduled Land.

[53] The applicant also contends the land administrator should award based on the cost method (see encl 40 applicant's written submission, para 15 at p 7).

[54] The applicant further contends that adequate compensation is compensating parcel owners for the entirety of the Scheduled Land. This approach ensures that the parcel owners receive compensation that aligns with their proportional share in the Scheduled Land, thus upholding the principle of equivalence.

[55] For the above propositions, the applicant relies, inter-alia, on the words 'adequate compensation' in art 13 of the Federal Constitution, the decision of the Court of Appeal in *Jais bin Chee & Ors v Superintendent of Lands and Surveys Kuching Division, Kuching* [2014] 6 MLJ 439 (CA) ('Jais bin Chee') and the 'Principle of equivalence' propounded by the Federal Court in *Semenyih Jaya.*

Land administrator's contentions

[56] The land administrator asserts:

(a) the market value assigned to the parcel accurately reflects its market value;

(b) the compensation provided for the parcel encompasses the value of the common property;

(c) the applicant's method of combining the parcel value and the value of the common property is considered 'double counting'; and

(d) compensation should only be given to each parcel and not the whole of the Scheduled Land that was *gazetted* according to the LAA 1960.

Court's analysis on issue (1)

[57] As I see it, the real sting of the applicant's contention is that if the parcel owners are only compensated for the value of their respective flats it would mean the acquirer/developer ultimately developing the Schedule Land will obtain a windfall gain, a *durian runtuh* to use a Malay peribahasa, as the developer will get for free the common property which constitutes 84.5% of the Schedule Land.

[58] Would such a principle of compensation satisfy the principle of equivalence? A

The law

[59] Article 13 of the Federal Constitution states that: B

(1) No person shall be deprived of property save in accordance with law.

(2) No law shall provide for the compulsory acquisition or use of property without *adequate compensation*. (Emphasis added.)

C

'Adequate compensation' in art 13 of the Federal Constitution

[60] The applicant relies on the Court of Appeal's decision in *Jais bin Chee which* held that the words 'adequate compensation' in art 13 of the Federal Constitution mean 'a fair and reasonable compensation'. D

[61] The Court of Appeal further held that if the criteria for valuing compensation set out in the land acquisition statute violates the requirement in art 13 of the Federal Constitution for 'a fair and reasonable compensation' the court will construe the applicable land acquisition section to bring it into accord with art 13 of the Federal Constitution. E

[62] The court of appeal did not follow the statutory stipulated date of valuation ie 3 October 1996 but awarded compensation based on a later date of 12 August 2005 as the inquiry was not conducted until nine years after the *gazetted* notification on 3 October 1996 that the land would be compulsorily acquired. F

[63] This is how David Wong JCA puts it: G

> [24] Reverting to the appeal at hand, all the appellants only want is that the compensation amount to be paid for the acquisition is to be premised on the date of inquiry which was held on 24 November 2005. We find that request not only reasonable but also would be consistent with the spirit of art 13 which commands 'adequate compensation' to be given to the appellants. The words 'adequate compensation' must be given their proper interpretation. The word 'adequate' can only mean what is fair and reasonable compensation and in the context of this case the value should be that as at 24 November 2005 ... H
>
> [25] We are fully aware of the wordings in s 60 of the Sarawak Land Code dictate that the 1996 valuation is to be used as the compensation to be paid. As we mentioned above, all statutes be in federal or state must be read having regard to the Federal Constitution and in this case, art 13. I
>
> [26] In *B Surinder Singh Kanda v The Government of the Federation of Malaya* [1962] 1 MLJ 169, this is what Lord Denning when delivering the advice of the

board said:

> In a conflict of this kind between the existing law and the Constitution, the Constitution must prevail. The court must apply the existing law with such modifications as may be necessary to bring it into accord with the Constitution.

...

[28] Applying the above principles set out above, we are of the considered view that s 60(1)(a) of the Sarawak Land Code read with art 13 of the Federal Constitution demands that the s 51 inquiry for compensation to be paid be conducted within a reasonable time frame so that an 'adequate compensation' can be ascertained. In the case at hand, the s 51 inquiry was not conducted until some nine years later. In order not to infringe art 13 of the Federal Constitution, we are constrained to find that the 'adequate compensation' to be the amount valued as at 12 August 2005.

[64] However, I am unable to apply the Court of Appeal's decision in *Jais bin Chee* as certain aspects of its reasoning had been overruled subsequently by the Federal Court in *Yong Ing Kai & Anor v Superintendent of Lands and Surveys Kuching Division* [2023] 6 MLJ 904; [2023] 10 CLJ 206 (FC) at held [2] and [3].

'Adequate compensation' in art 13 of the Federal Constitution refers to compensation based on principle of equivalence

[65] For the purposes of the land reference before me it suffices for me to rely on the holding by the Federal Court in *Semenyih Jaya* that 'adequate compensation' in art 13 of the Federal Constitution refers to the 'Principle of equivalence'.

[66] The 'Principle of equivalence' requires the sum that is awarded should, as far as practicable, place the person in the same financial position as he would have been in had there been no question of his land being compulsorily acquired.

[67] This is what the Federal Court in *Semenyih Jaya* said via Zainun Ali FCJ:

> *Adequate compensation*
>
> [197] Article 13(2) is a constitutional safeguard to land owners to receive 'adequate compensation' upon acquisition. Even as the Act authorises the state to acquire land from land owners, the law provides that the person deprived of his property must be adequately compensated.
>
> [198] But what is adequate compensation for a person who has been deprived of his or her property? The term 'adequate compensation' is not defined in the Act. In *Pentadbir Tanah Daerah Gombak lwn Huat Heng (Lim Low & Sons) Sdn Bhd* [1990] 3 MLJ 282, the Supreme Court held *that 'the basic principle governing compensation*

is that the sum awarded should, as far as practicable, place the person in the same financial position as he would have been in had there been no question of his land being compulsorily acquired' (see Compulsory Acquisition and Compensation by Sir Frederick Corfield QC and RJA Carnwath).

[199] The above principle is known as *the principle of equivalence. By this principle, the affected land owners and occupants are entitled to be compensated fairly for their loss.* But they should receive compensation that is no more or no less than the loss resulting from the compulsory acquisition of their land.

Assessment of compensation under the Act

[200] An assessment of compensation arising out of an acquisition is governed by the First Schedule to the Act. Based on the First Schedule, the quantum of compensation is based on the market value of the land acquired plus the consequential loss suffered by the affected land owners and occupants. Thus, an assessment of compensation is underpinned by the principle of equivalence. The affected land owners and occupants are entitled not only to the market value of the land but also to compensation for the loss and disturbance occasioned, arising out of the acquisition. For a claim to be allowed, it must fall within the heads of compensation listed in para 2 of the First Schedule.

[201] Based on para 2 of the First Schedule there are six matters (heads of compensation) which are to be taken into consideration when compensation is determined. The heads of compensation are: (a) market value; (b) increase in value of the other land of the person from whom land is acquired; (c) damage caused by severance from any other land of the person from whom the land is acquired; (d) injurious affection; (e) forced change of residence or place of business due to acquisition; and (f) where only part of the land is acquired, any undertaking given by the state authority for the provision of facilities for the portion left unacquired.

Paragraph 1 of the First Schedule is the market value rule. Generally, the market value of an acquired land comprises the value of the land acquired based on comparable sales in the vicinity of the acquired land and the condition of the land having regard to the existence of any buildings, improvements to the land and any encumbrances and restrictions in the title.

[202] By para 3, any matter which falls within the descriptions provided in the paragraph must not be taken into consideration in assessing the amount of compensation. Such matters include the urgency in acquiring the land and any depreciation or increase in the value of the land acquired as a result of the acquisition (Emphasis added.)

[68] I now move to the crux of the issue before me. Is the flat owner entitled to be compensated for the value of his flat and his unit share of the common property when the common property is also acquired?

[69] The answer surely must be a Yes. If the flat owners were to sell their flats and common property in an *en bloc sale* (French for 'in its entirety'), each of the flat owner is entitled to be compensated for the value of his flat and his unit

share of the value of the common property.

[70] This would satisfy the 'Principle of equivalence' which requires the sum that is awarded should, as far as practicable, place the person in the same financial position as he would have been in had there been no question of his land being compulsorily acquired.

[71] To hold otherwise would mean the acquirer/developer ultimately developing the Schedule Land will obtain a windfall gain, a *durian runtuh* to use a Malay peribahasa, as the acquirer / developer will get for free the common property which constitutes 84.5% of the Schedule Land.

[72] Support for the above proposition can be obtained from *Perbadanan Pengurusan Ara Ampang v Pentadbir Tanah Daerah Hulu Langat* [2021] 10 MLJ 752 (HC) ('Perbadanan Pengurusan Ara Ampang') where the facts are as follows.

[73] The land reference concerned the question of law whether, after having compensated the parcel owners of strata units for the market values of their respective strata units, the acquisition authority could acquire the common property in the same strata development in the same acquisition process without paying any value to the management corporation of the strata development.

[74] The respondent argued that the management corporation should not get any monetary compensation whatsoever for the common property in the strata development, whereas the appellant argued that as the management corporation, it was entitled to a reasonable compensation for the common property in the strata development which had been acquired in the same process as the acquisition of the strata units in the same development.

[75] It was further argued by the respondent that the value of the common property had been included in the compensations paid by the acquisition authority to the parcel owners for their respective parcel units in the strata development.

[76] The High Court ruled in favour of the management corporation and held that the proposition that the acquisition authority could compulsorily acquire the common property in the same strata development in the same process of acquisition without paying any value to the management corporation of the strata development was irrational and illogical. It was inconsistent with the principles of fair market value compensation as decided in Federal Court in *Semenyih Jaya* and the Court of Appeal's decision in

Nusantara Jaya Daya Sdn Bhd v Pentadbir Tanah Johor Bahru [2020] MLJU 110 (CA).

[77] This is what the High Court in *Perbadanan Pengurusan Ara Ampang* said:

> [6] Firstly, *it is clear law that a management corporation, upon its incorporation, is a legal entity separately from the parcel owners in the strata development*: see s 39(3) of the Strata Titles Act 1985 and s 20 of the Strata Management Act 2013, *Lionel Yew Wei Ming & Anor v Menara Duta Management Corporation* [2018] 1 LNS 2294 (Su Geok Yiam J).
>
> [7] Secondly, the common property is not part of a parcel or accessory parcel which is owned by an individual unit owner in the strata development, as is self-evident in the statutory definition of 'common property' set out below and also the judgment of Idrus Harun JCA (later FCJ) in *E & O Trading Sdn Bhd v Americk Singh Sidhu & Ors and another appeal* [2018] 6 MLJ 783; [2018] 7 CLJ 685 at para [22]:
>
> ...
>
> [8] In the third place, *it is clear law that the management corporation upon its coming into existence is the proprietor of all common property in the strata development*: see s 42(1) of the Strata Titles Act, s 17(3) of the Strata Titles (Amendment) Act 2013 (Act A1450) Court of Appeal's decision in *Malaysia Land Properties Sdn Bhd v Waldorf Joint Management Body* [2014] 6 MLJ 821 (Mah Weng Kwai JCA), *Park Access Sdn Bhd & Ors v Badan Pengurusan Bersama Prima Avenue dan DPCC Fasa 1 (Blok G, H, I)* [2018] MLJU 647; [2018] 1 LNS 711 at para [28].
>
> ...
>
> [12] *Section 57 of the Strata Titles Act recognises*, among others, the following legal positions:
>
> (a) where a strata building is totally destroyed, there is no longer any strata parcel in existence and therefore the entire land upon which the building previously stood will belong to the management corporation;
>
> (b) *the management corporation can, with the resultant cancellation of subdivision, sell or transfer the said land for a fair market value; an*d
>
> (c) *the sale proceeds*, after deduction of expenses of and ancillary to the sale, *shall be distributed to the former proprietors in proportion to their parcels' values immediately before the date of destruction of the building.*
>
> This is statutory recognition that the management corporation can obtain sale proceeds from the property in respect of which the management corporation is the proprietor, and thereafter distribute any unutilised surplus proceeds to the previous parcel owners. Implicit in s 57 read in light of the law of property is that as a proprietor, the management corporation is entitled to a reasonable value for the property (including common property) owned by it in the event of a sale or acquisition by another legal entity. (Emphasis added.)

[78] No appeal was lodged to the Court of Appeal against this decision of the High Court in *Perbadanan Pengurusan Ara Ampang*.

[79] Additional support of the proposition that the flat owner is entitled to be compensated for the value of his flat and his unit share of the common property when the common property is also acquired can be found in s 57A read with the Seventh Schedule and s 17B of the Strata Titles Act 1985.

[80] I shall now examine ss 17B, 57A and the Seventh Schedule of the Strata Titles Act 1985.

Strata Titles Act 1985

[81] Section 17B of the Strata Titles Act 1985 states that the management corporation shall become the proprietor of the common property.

[82] Section 17B states as follows:

> Section 17B Ownership of common property and custody of issue document of title
>
> (1) *The management corporation shall become the proprietor of the common property* and the custodian of the issue document of title of the lot.
>
> (2) Subject to subsection (3), the management corporation shall, in relation to the common property, have the powers conferred by the National Land Code on a proprietor in relation to its land.
>
> (3) *The management corporation* —
>
> (a) shall exercise all the powers referred to in subsection (2) only on the authority of a unanimous resolution (except where it is specifically provided otherwise in this Act); and
>
> (b) *shall not have the power to transfer, charge or lien any portion of the common property which forms part of the building or of the land on which the building stands.* (Emphasis added.)

[83] Section 57A of the Strata Titles Act 1985 also provide that when a subdivided building or land is acquired under the LAA 1960, the Seventh Schedule shall apply.

[84] The Seventh Schedule states that *where the whole lot with subdivided building or land is acquired under the LAA 1960* the *management corporation shall liquidate any assets and distribute any profits to the former proprietors proportionately based on the share units or provisional share units* which they held immediately before the taking of formal possession.

[85] Section 57A of the Strata Titles Act 1985 reads as follows:

PART VIIIA — EFFECT OF ACQUISITION OF SUBDIVIDED BUILDING OR LAND

Section 57A Procedure of taking formal possession of any subdivided building or land

(1) *Upon taking formal possession of the whole or part of subdivided building or land under the Land Acquisition Act 1960 [Act 486], the Seventh Schedule shall apply* in so far as they relate to the procedures for the modification of the relevant strata register, affairs of the management corporation and other purposes connected therewith.

(2) Other provisions of this Act which relate to the forms of document of strata title, the procedure for the preparation and registration of any document of strata title, shall be read with modifications, amendments, additions, deletions, substitutions or adaptations as provided in the Seventh Schedule.

(3) The Minister may, with the approval of the National Land Council, by order published in the *Gazette*, make any amendment to the Seventh Schedule. [*Ins. Act A1518*]

[86] The Seventh Schedule of the Strata Titles Act 1985 states:

Seventh Schedule

Effect Of Acquisition Of Subdivided Building Or Land

Interpretation

1. In this Schedule, unless the context otherwise requires —

'former proprietor' means a person who, or a body which, immediately before taking of formal possession of the whole or part of subdivided building or land, is the proprietor of a parcel in the building or land or of a provisional block on the land on which the building is situated;

'the Code' means the National Land Code 1965 [Act 56/1965].

Acquisition of the whole lot with subdivided building or land

2. *In the case where the whole lot with subdivided building or land is acquired under the Land Acquisition Act 1960 —*

(a) *The management corporation shall liquidate any assets and distribute any profits to the former proprietors proportionately based on the share units or provisional share units which they held immediately before the taking of formal possession*;

(b) The management corporation shall determine the reasonable period for the management corporation to continue in existence to settle its affairs;

(c) The management corporation shall continue in existence for so long as it is reasonably necessary to settle its affairs and shall then cease to exist;

(d) The management corporation shall inform the Registrar the date that the management corporation shall cease to exist; and

(e) The Registrar shall cancel the relevant book of the strata register.

Cumulative effects of ss 17B, 57A and the Seventh Schedule of the Strata Titles Act 1985

[87] In my view, the cumulative effects of ss 17B, 57A and the Seventh Schedule of the Strata Titles Act 1985 is that the management corporation is merely holding the common property as bare trustee for the flat owners.

[88] Based on the above law, the following principles must apply when the entire land where a block of flats sits *is acquired, including the common property*:

(a) the flat owners in the land reference are entitled to compensation based on their individual flat;

(b) the management corporation is entitled to compensation for the common property as the management corporation owns the common property, albeit as trustee for the flat owners;

(c) the management corporation shall pursuant to s 57A of the Strata Titles Act when the subdivided building or land is acquired under the LAA 1960, distributes the compensation for the common property to the former proprietors in proportion to their share units; and

(d) if the management corporation is not set up, then compensation for the common property is given to the flat owners in proportion to their share units. This is because the common property is held in trust by the developer for the benefit of all parcel purchasers (see ss 8 and 17 of the Strata Management Act 2013).

[89] The above compensation scheme when a subdivided building or land is acquired under the LAA 1960 is also in accord with the 'Principle of equivalence' as, in a willing buyer willing seller *en bloc sale* by the flat owners, each owner will receive compensation based on his flat and his share units of the common property.

Section 57 of the Strata Titles Act

[90] Section 57 of the Strata Titles Act also states that the management corporation is the trustee of the proprietors and upon termination of subdivision shall distribute any profits arising from its proprietorship of the lot, including any purchase money received on a transfer, to the former proprietors

proportionately based on the open market capital values of the parcels immediately before the termination of the subdivision.

[91] Section 57 of the Strata Titles Act states as follows:

57 Termination of subdivision

(1) The management corporation, where —

(a) *the building is totally destroyed*; or

(b) *the parcel proprietors seek to demolish the building* or in the case of a building which has been partially destroyed, the remaining parts of the building; or

(c) there is only one proprietor for all the parcels,

after making sure that no land revenue is outstanding *may be directed by unanimous resolution to take action to terminate the subdivision of the building* or land; and, subject to any order of a court of competent jurisdiction made under subsection (7), the management corporation if so directed shall lodge with the Registrar a notification in Form 8 together with the issue documents of title of the land and the parcels and of provisional blocks, if any.

(2) On receipt of a notification under subsection (1) and if the Registrar is satisfied, he shall make a memorial of the notification in the register and the strata register, and shall inform the Director of Survey that he has done so.

(3) On the making of a memorial under subsection (2) in respect of a subdivided building or land —

(a) the subdivision shall be terminated and the proprietors shall cease to be proprietors of the parcels and provisional blocks; and

(b) *the management corporation shall become the proprietor of the lot as the trustee of the former proprietors.*

(4) Where the management corporation becomes the proprietor of the lot under subsection (3) —

(a) any registered charge on a parcel which existed immediately before the termination of the subdivision shall be converted into a personal obligation of the chargor to pay to the chargee what is due under the charge;

(b) each of the former proprietors shall continue to be a member of the corporation, having the same voting rights as he had immediately before the termination of the subdivision;

(c) the management corporation shall hold and manage the lot for the benefit of the former proprietors;

(d) *the former proprietors may by unanimous resolution direct the management corporation —*

(i) *to transfer the lot* to any one or more of the former proprietors or *to any other person or body*; and

(ii) to determine the reasonable period for the management corporation to continue in existence to settle its affairs;

(e) *the management corporation shall distribute any profits arising from its proprietorship of the lot, including any purchase money received on a transfer, to the former proprietors proportionately based on the open market capital values of the parcels* immediately before the termination of the subdivision ascertained in a valuation report prepared and certified by a registered valuer under the Valuers, Appraisers and Estate Agents Act 1981 [Act 242]. (Emphasis added.)

Contention of the land administrator that the compensation provided for the parcel encompasses the value of the common property

[92] The land administrator contends that the compensation provided for the parcel encompasses the value of the common property. I am unable to accept this contention. It is not supported by the valuation report of the land administrator furnished to court. My holding is also confirmed by the Government assessor in his report dated 18 May 2024 at para 3.1.

[93] In conclusion, for the reasons above, on issue (1) I hold that the applicant in the land reference is entitled to compensation based on his flat and his share units of the value of the common property when the entire land — where the block of flats sits — is acquired including the common property.

[94] I now move to issue (2).

Issue 2 — If the answer to issue (1) is affirmative, how does one value the applicant's share of the common property

Valuations of the Government assessor

[95] The Government assessor's reports are dated 18 May 2024 and 17 February 2025. Sr Mohd Zamri bin Awang states that the applicant's valuer had valued compensation based on the size of the unit owned by the applicant and the common property. He contends that compensation must be based on the size of the unit owned by the applicant and exclude the common property or there will be 'double counting' (see report dated 18 May 2024 at pp 4 and 5). He further says there should be no increase in the award made by the land administrator. For the reasons I had set out above, I cannot accept this contention. It is also not supported by any evidence or caselaw.

[96] At my request the Government assessor has furnished the total value for

the common property comprising *the hall and the carpark lots* at RM6,343,957.50 and the applicant's share as RM79,300 (see report dated 17 February 2025 at p 9).

[97] At my request the Government assessor has also furnished the total value for the common property comprising *the unused land* at RM12,967,850. This sum for the value of the vacant land is arrived at after deducting 5% from the comparable land for the cost of demolishing the block of old flats and to clear the debris (see report dated 17 February 2025 at p 8).

[98] The Government assessor says this sum of RM12,967,850 should be paid to the Scheduled Land owner (ie Hwa-Li Development Sdn Bhd) or the liquidator as Hwa-Li Development Sdn Bhd had been dissolved (see report dated 17 February 2025 at p 10). For the reasons I had set out above, I cannot accept this contention. It is also not supported by any evidence or caselaw.

Valuations of the private sector assessor

[99] The private sector assessor's reports are dated May 24, 17 February 2025 and 11 June 2025. Zaifunur'Ain bt Zainal Abidin says there should be no increase in the award made by the land administrator. She contends that the common property is owned by the management corporation and to award the flat owner inclusive of the common property will be giving compensation equivalent to a bungalow for a low-cost unit (see report dated May 24 at p 7). For the reasons I had set out above, I cannot accept this contention. It is also not supported by any evidence or caselaw.

[100] At my request the private sector assessor has furnished the total value for the common property comprising the hall and the carpark lots at RM6,223,756.20 and the applicant's share as RM77,796.95 (see report dated 17 February 2025 at part H and Lampiran A).

[101] At my request the private sector assessor has also furnished the total value for the common property comprising *the unused land* at RM12,086,036.20 (see report dated 17 February 2025 at part H and Lampiran A).

Valuations of the applicant's valuer

[102] The valuer appointed by the applicant, Weise International Property Consultants Sdn Bhd, employed three valuation methods. However, ultimately the applicant's counsel focus on two methods which are the comparison method and cost method.

[103] Utilising the comparison method, the applicant claims compensation of RM537,000 per parcel.

[104] Using the cost method, where the combined value of the Scheduled Land and the building costs (Rajawali Flat) (after depreciation) was divided by the share units held by the applicant, the applicant claims RM390,000 per parcel (see applicant's written submission encl 40 at para 15 p 7).

[105] The applicant has opted to claim based on the cost method on the ground it is the most reliable method (see applicant's written submission encl 40 at para 135[d] at p 48).

[106] A sum of RM101,944.50 was awarded to the applicant in this land reference based on his parcel value only. He claims based on the cost method he should be awarded RM390,000 based on his flat value and his unit share of the common property. He therefore claims additional compensation of RM288,055.50.

Valuations of the Government valuer

[107] The Government valuer has valued the total value for the common property comprising *the unused land* (5187.14 MP at RM1,500 SMP) at RM12,968,000 (see encl 53 at p 17).

[108] But no valuation was provided for the common property comprising the hall and the carpark lots. Therefore, the court cannot use the valuation of the Government valuer for issue (2).

Court's analysis

Law

[109] A judge is not to be bound by the opinion of either assessor; if there is disagreement between the assessors, the judge can elect to consider which of the two opinions in his view is appropriate in the circumstances of the case; if the judge disagrees with the opinions of both the assessors, he is at liberty to decide on a reasonable amount of compensation and give his reasons for so finding (see *Semenyih Jaya*).

[110] Valuation is more an art than a science. Valuation can never be a strictly mathematical process (see *The Law on Land Acquisition* by Su Tiang Joo and Pang Kong Leng (CLJ Publication 2018 ed)).

[111] In *Bertam Consolidated Rubber Co Ltd v Deputy Collector of Land*

Revenue, Butterworth [1965] 1 MLJ 171 (HC), Hepworth J said at p 176:

> *Valuation can never be a strictly mathematical process* and, in particular, remote potential development value is often not easy to quantify in the absence of an abundance of evidence culled from recent transactions in respect of comparable property. Rarely is the available evidence overwhelmingly convincing and ultimately it becomes a matter of opinion based upon experience.
>
> *Almost invariably there emerges from a consideration of all the facts a fairly well-defined range* although sometimes somewhat blurred at either end *within which the answer clearly must lie and the opinions of those of equal competence and experience may well tend to indicate different points within that range.* (Emphasis added.)

Various methods of valuation of a piece of land consisting of a building and vacant land

[112] The Malaysian Valuation Standards ('MVS') (6th Ed) dated 1 January 2019 issued by the Board of Valuers, Appraisers, Estate Agents and Property Managers sets out the standards that cover various aspects of property valuation.

[113] The MVS at para 7.2 states that the various methods of valuation are the market/comparison approach, costs approach and other valuation approaches or methods. Detailed guidelines are given for the first two methods. No detailed guidelines are given for the 'Other Valuation Approaches or Methods', other than a reminder that the method used must be shown in full and explained.

Land administrator's position on the correct method of valuation

[114] Counsel for the land administrator informed the court that the court should use the market/comparison approach and not the costs approach.

The applicant relies on costs approach

[115] Counsel for the applicant submits that the cost method is the appropriate method for this case. What he meant is the costs approach as set out in the MVS.

[116] Much confusion has been caused by counsel in past cases due to inaccurate usage of terminologies as can be seen in reported judgments where the courts followed the different terminologies used by counsel.

[117] The costs approach is sometimes referred to as the depreciated replacement cost method, in short 'DRC' (see *Shell (M) Trading Sdn Bhd v Pentadbir Tanah Wilayah Persekutuan* [2014] 8 MLJ 94 (HC), per Vazeer

Alam Mydin JC at [24] and *Choo Oh Kim and others v Mok Yuen Lok and others* [2005] MLJU 186 (HC), per Mohd. Noor Abdullah J).

[118] The courts have accepted the costs approach also called the depreciated replacement cost method, in short 'DRC' as an accepted method to value buildings (see *Teguh Kemajuan Sdn Bhd v Pentadbir Tanah, Daerah Kota Tinggi (Perbadanan Setiausaha Kerajaan Johor (SSI), pihak pencelah)* [2018] MLJU 442 (HC), per *Shell (M) Trading Sdn Bhd v Pentadbir Tanah Wilayah Persekutuan* [2014] 8 MLJ 94 (HC) at [24] and *Choo Oh Kim and others v Mok Yuen Lok and others* [2005] MLJU 186 (HC)).

[119] Counsel and all valuers should use the terms set out in the MVS moving forward to promote clarity and avoid confusion.

[120] The cost approach determines a property's value by calculating the cost of the land (using the market/comparison approach), the actual construction costs to estimate the current replacement cost new of a similar simple modern substitute of the buildings, structures and improvements on the site, and then deducting for depreciation/ obsolescence to reflect the current condition of the buildings, structures and improvements. This method is suited for evaluating land with existing buildings situated on the land.

[121] The MVS Standard at 7.2.1.3 explains the cost approach as follows:

> 7.2.1.3 Cost Approach
>
> A. Buildings, Structures and Improvements
>
> (a) The *actual construction/tender cost* and comparable cost data as are available *to estimate the current replacement cost new* of a similar simple modern substitute of the buildings, structures and improvements on the site must be compiled, verified, analysed and kept by the Valuer.
>
> (b) In adopting the actual construction cost as the basis of estimating the value, the Valuer is to make reference to the market to ensure that the said cost is realistic and reflective of the market.
>
> B. *Depreciation/Obsolescence Allowanc*e
>
> The Valuer shall reflect the current condition of the buildings, structures and improvements by way of depreciation in terms of physical deterioration, functional obsolescence and economic obsolescence and the amount deducted for the depreciation should be stated.
>
> C. Land
>
> *The land value* shall be *determined by* using the *Market/Comparison Approach.* (Emphasis added.)

The Government assessor's valuation of the applicant's share of the common property

[122] The Government assessor did not use the cost approach. Instead he valued the vacant land/tanah kosong by using a nearest comparable in PT 9768, HSD 121982 and then deduct 5% for the costs of demolishing the block of flats, hall and clearing the debris to arrive at RM2,375 per sqmt for the vacant land/tanah kosong (see report dated 17 February 2025 at p 8).

[123] Using the valuation of RM2,375 per sqmt for the vacant land/tanah kosong the Government assessor has valued the total value for the common property comprising *the hall and the carpark lots* at RM6,343,957.50 and the applicant's share as RM79,300 (see report dated 17 February 2025 at p 9).

[124] Using the valuation of RM2375 per square meter for the vacant land/tanah kosong the Government assessor has also valued the common property comprising *the unused land* at RM12,967,850. The applicant's share would be RM12,967,850 @ 43/3440 = RM162,098.12.

[125] The total additional compensation for the applicant according to the Government assessor will be RM79,300 + RM162,098.12 = RM241,398.12.

The private sector assessor's valuation of the applicant's share of the common property

[126] The private sector assessor did not use the cost approach. Instead she valued the vacant land/*tanah kosong* by using a nearest comparable in PT 9768, HSD 121982 and then deduct 5% for location, 5% for land category, 10% for DO approval and 5% for the costs of demolishing the block of flats, hall and clearing the debris to arrive at RM2330 per sqmt for the vacant land/tanah kosong (see report dated 17 February 2025 at *Lampiran* A).

[127] Using the valuation of RM2,330 per square meter for the vacant land/tanah kosong the private sector assessor has valued the total value for the common property comprising the *hall and the carpark lots* at RM6,223,756.20 and the applicant's share as RM77,796.95 (see report dated 17 February 2025 at part H).

[128] Using the valuation of RM2,330 per sqmt for the vacant land/*tanah kosong* the private sector assessor has also valued the common property comprising *the unused land* at RM12,086,036.20. The applicant's share would be RM12,086,036.20 @ 43/3440 = RM151,075.45.

[129] The total additional compensation according to the private sector

assessor for the applicant will be RM77,796.95 + RM151,075.45 = RM228,872.40.

Summary on claims for additional compensation

[130] In summary, the applicant claims additional compensation of RM288,055.50. The Government assessor says it should be RM241,398.12. The private sector assessor says it should RM228,872.40.

[131] As held by Hepworth J in *Bertam Consolidated Rubber Co Ltd v Deputy Collector of Land Revenue, Butterworth* [1965] 1 MLJ 171 (HC), valuation can never be a strictly mathematical process.

[132] The Federal Court in *Semenyih Jaya* has said:

> [215] In view of the above, *although comparable sales in the vicinity of the acquired land is an important component in the computation of market value of an acquired land, 'any suitable method of valuation' is also allowed. Therefore, any appropriate method that serves to provide equivalent compensation to affected persons can be applied.* (Emphasis added.)

[133] However, in my view the cost approach advocated by the applicant is not suitable as the block of flats is old and low-costs. It is highly unlikely the acquirer will refurbish it to resell. It is more likely it will be demolished to be redeveloped from a completely vacant land.

[134] I prefer the valuation method used by both the Government assessor and the private sector assessor which is to value the vacant land/tanah kosong by using a nearest comparable in PT 9768, HSD 121982 and then make the necessary deductions for location, for land category, for DO approval and for the costs of demolishing the block of flats, hall and clearing the debris.

[135] The Government assessor says the additional compensation should be RM241,398.12. The private sector assessor says it should be RM228,872.40. A fair sum is the average of these two sums which gives an additional compensation to the applicant of RM235,135.26.

Interest payable

[136] Pursuant to s 48 of the LAA 1960 if the sum which the court awards as compensation is in excess of the sum which the land administrator did award, the court may direct that the land administrator to pay late payment charges on such excess at the rate of five per cent per annum from the date on which the land administrator took possession of the land to the date of payment of such excess.

(See *Koriah bt Sudar v Pentadbir Tanah Kuala Langat* [2013] 3 MLJ 695; [2013] 5 CLJ 571 (CA) at [22]–[24] and *Amitabha Guha (as beneficiary for the estate of Madhabendra Mohan Guha) v Pentadbir Tanah Daerah Hulu Langat* [2021] 4 MLJ 1 (FC) at para 62).

[137] For completeness, although not applicable based on the land reference date here, I should say that the rate was amended from 8%pa to 5%pa with effect from 1 December 2017. The amendment is not retrospective and does not apply to land reference proceedings pending before the High Court on 1 December 2017 (see *Amitabha Guha (as beneficiary for the estate of Madhabendra Mohan Guha) v Pentadbir Tanah Daerah Hulu Langat* [2021] 4 MLJ 1 (FC) at para 78).

[138] Section 48 of the LAA 1960 states:

> If the sum which in the opinion of the Court the Land Administrator ought to have awarded as compensation is in excess of the sum which the Land Administrator did award as compensation, the award of the Court may direct that the Land Administrator to pay late payment charges on such excess at the rate of five per cent per annum from the date on which the Land Administrator *took possession of the land* to the date of payment of such excess to the Court or to the person interested. (Emphasis added.)

[139] The phrase 'took possession of the land' in s 48 of the LAA 1960 means the taking of formal possession of the subject lands by the land administrator upon service or posting of a Form K notice under s 22 (see *Amitabha Guha (as beneficiary for the estate of Madhabendra Mohan Guha) v Pentadbir Tanah Daerah Hulu Langat* [2021] 4 MLJ 1 (FC) at paras 61–63 and 77).

[140] The land administrator had taken formal possession of the Scheduled Land on 27 September 2022 when they issued a notice in Form K to the parcel owners. Section 22 of the LAA 1960 states:

> (1) The Land Administrator shall take formal possession of any scheduled land by serving upon the occupier thereof or, if he cannot be found, by posting thereon, a notice in Form K.
>
> (2) A copy of the list of lands gazetted under subsection 8(1), or any relevant part thereof, shall be included as a schedule to the notice in Form K.
>
> (3) Upon taking possession of land under subsection (1) the Land Administrator shall also serve a copy of the notice in Form K upon —
>
> (a) the registered proprietor of the land, where he is not the occupier;

A (b) the proper registering authority, where he is not the Land Administrator himself; and

(c) the statutory body, person or corporation referred to in paragraph 23(a), and the management corporation in respect of a subdivided building or land.

B

[141] Therefore, I award late payment charges at 5% per year on the additional compensation award of RM235,135.26. calculated from 27 September 2022 to the date of payment of the additional compensation.

C

Cost of the proceedings

[142] Section 51 of the LAA 1960 sets out who should bear the cost of the proceedings:

D

(1) In any proceedings arising from an objection to the amount of an award, costs shall be borne in accordance with the following provisions:

(a) where the amount of the Court award does not exceed the sum awarded by the Land Administrator the costs shall be paid by the applicant;

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(b) *where the amount of the Court award exceeds the sum awarded by the Land Administrator, the costs shall ordinarily be paid by the Land Administrator*, but if the Court is of opinion that the claim of the applicant was so excessive or that he was so negligent in putting his case before the Land Administrator that some deduction from his costs should be made, or that

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he should pay a part of the Land Administrator's costs, the Court may make such order as to costs as it may think fit;

(c) *where the claim of the applicant exceeds by twenty per cent or more the amount of the Court award, he shall not be entitled to his costs.*

G

[143] Cost is at the discretion of the court subject to s 51 of the LAA 1960 (see *Draman bin Kassim v Land Administrator, District of Hulu Terengganu* [1990] 3 MLJ 465; [1990] 2 CLJ 926 (SC) and *The Law on Land Acquisition* by Su Tiang Joo and Pang Kong Leng (CLJ Publication 2018 Ed) at p 137).

H

[144] In the instant case I have awarded additional compensation to the applicant of RM235,135.26. The applicant had claimed additional compensation of RM288,055.50. The claim exceeds my award by 22.5%. Thus, the claim of the applicant exceeds by twenty per cent or more of the court

I

award. He shall not be entitled to his costs (see *Amitabha Guha (as beneficiary for the estate of Madhabendra Mohan Guha) v Pentadbir Tanah Daerah Hulu Langat* [2021] 4 MLJ 1 (FC) at para 75).

Assessors' fees

[145] Section 40B of the LAA 1960 states that:

> (5) Every assessor shall receive a fee for his service as the Judge shall direct provided that such fee shall not exceed five hundred ringgit a day, or such higher figure the Minister may, with the approval of the National Land Council, by notification in the *Gazette* prescribe.
>
> (6) The fee of an assessor shall be deemed to be costs in the proceeding.

[146] Presently the assessors' fees is RM500 for each day of their attendance in court. As there are no rules or guidelines issued on who should bear these fees, I exercise my discretion to have the applicant bears these fees as part of the costs in the proceeding.

Deposit

[147] Section 39 of the LAA 1960 states that:

> (1) Before making reference to the Court the Land Administrator shall require each person making application therefor to deposit with the Land Administrator a sum of three thousand ringgit or ten percent of the amount claimed in respect of the interest under reference whichever is the less as security for the costs of reference and appeal.
>
> (2) In the event of the deposit required under subsection (1) not being made within thirty days of its being required by the Land Administrator the application for reference shall be deemed to have been withdrawn and the Land Administrator's award shall thereupon become final.

[148] I shall order the land administrator to refund this deposit of RM3,000 to the applicant since I have allowed the applicant's claim for higher compensation.

[149] Lastly, I thank all counsel and the assessors for assisting me greatly in this case.

DECISION

[150] For the reasons above, the applicant is entitled to additional compensation of RM235,135.26.

[151] I award late payment charges at 5% per year on the additional compensation award of RM235,135.26 calculated from 27 September 2022 to payment.

[152] Deposit of RM3,000 to be refunded to the applicant.

[153] Cost of each assessor at RM500 each per day of attendance to be paid by the applicant within four weeks from today to the two assessors.

[154] No cost is awarded to the applicant.

Order accordingly.

Reported by Nabilah Syahida Abdullah Salleh